

HOUSE BILL REPORT

ESHB 1632

As Passed House:
June 28, 2013

Title: An act relating to regulating the use of off-road vehicles in certain areas.

Brief Description: Regulating the use of off-road vehicles in certain areas.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Shea, Blake, Kristiansen, Sells, Warnick, Upthegrove, Wilcox, Scott, Moscoso, Fagan and Condotta).

Brief History:

Committee Activity:

Transportation: 2/11/13, 2/28/13 [DPS].

Second Special Session

Floor Activity:

Passed House: 6/28/13, 81-11.

Brief Summary of Engrossed Substitute Bill

- Establishes a definition for "wheeled all-terrain vehicle" along with operator, equipment, and registration requirements and related exemptions.
- Establishes locations in which the wheeled all-terrain vehicle may be operated.
- Establishes documentation for required equipment installations for a wheeled all-terrain vehicle.
- Creates the Multiuse Roadway Safety Account.
- Clarifies that local land management requirements must be followed and a process for the operator to receive a citation with or without law enforcement presence.
- Clarifies when off-road vehicle (ORV) registrations and decals are not required for ORVs.
- Increases the age of a person from 13 to 16 years of age that may operate an ORV on or across a highway or non-highway road.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Adds definitions for "primitive road" to the definitions of a non-highway road, direct supervision, and emergency management.
- Designates that a county by ordinance may designate a road or highway within its boundaries to be suitable for use by ORVs.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Clibborn, Chair; Moscoso, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Angel, Farrell, Fitzgibbon, Hayes, Johnson, Kochmar, Kretz, Kristiansen, Moeller, Morris, O'Ban, Riccelli, Rodne, Sells, Shea, Upthegrove and Zeiger.

Minority Report: Do not pass. Signed by 8 members: Representatives Fey, Vice Chair; Liias, Vice Chair; Bergquist, Habib, Klippert, Ryu, Takko and Tarleton.

Staff: Jerry Long (786-7306).

Background:

Off-road vehicles (ORV) are labeled by the manufacturer's statement or certificate of origin as intended for "off-road use." The ORVs must display a current ORV tag that is purchased for \$18. The Department of Licensing (DOL) issues the registrations and temporary-use permits for ORVs and issues the ORV decals for a fee that covers the actual cost of the decal. The DOL retains enough money to cover expenses incurred in the administration of the ORV fee and the remaining funds are distributed for off-road recreational facilities.

Any out-of-state operator of an ORV must have their ORV registered in the state that they are a resident of or obtain a temporary ORV-use permit. The operator must be 13 years old to operate. Persons under 13 years old may operate the ORV under the direct supervision of a person 18 years or older who possesses a valid driver's license.

It is lawful to operate an ORV on a non-highway road if the state, federal, local, or private authority responsible for the management of the non-highway road authorizes the use of ORVs on that road.

If a person operating an ORV is in violation of one of the operator behavior or equipment requirement items listed in the ORV statutes, the fine is a traffic infraction. These infractions are treated as any other motor vehicle traffic infraction.

A person may operate, with a valid driver's license and a motorcycle endorsement, an off-road motorcycle (does not include wheeled all-terrain vehicles) upon a public road, street, or highway in Washington, if the person complies with the following requirements:

- files a motorcycle-use declaration, in which the DOL certifies conformance with all applicable federal motor vehicle safety standards and state standards;

- obtains and has in full force and effect a current and proper ORV registration or temporary ORV-use permit;
- obtains a valid driver's license and motorcycle endorsement issued to Washington residents; and
- installs various outlined motorcycle components, if not already present on the off-road motorcycle, which include a head lamp, a tail lamp, reflectors, brakes, a mirror on both the left and right handlebars, a windshield (unless the operator is wearing eye protection), a horn or warning device, turn signals, tires, and fenders.

The off-road motorcycle must be inspected by a Washington motorcycle repair shop or motorcycle dealer and certified by the dealer that the off-road motorcycle meets the equipment requirements.

The owner of the off-road motorcycle must sign a release that releases the State of Washington from any liability.

Currently any city, county, or other political subdivision of the State of Washington, or any state agency, may regulate the operation of non-highway vehicles on public lands, waters, and other properties under its jurisdiction; and on streets, roads, or highways within its boundaries by adopting regulations or ordinances, provided such regulations are not less stringent than the provisions of state laws.

A legislative body of a city with a population of less than 3,000 in population, may by ordinance, designate a street or highway within its boundaries to be suitable for use by ORVs. The legislative body of a county may, by ordinance, designate a road or highway within its boundaries to be suitable for use by ORVs if the road or highway is a direct connection between a city with a population of less than 3,000 and an ORV recreation facility.

Summary of Engrossed Substitute Bill:

The engrossed substitute bill establishes a definition for a "wheeled all-terrain vehicle" which is:

- a non-highway vehicle with handlebars that are 50 inches or less in width; has a seat height of at least 20 inches; weighs less than 1,500 pounds; and has four tires having a diameter of 30 inches or less; or
- a utility-type vehicle designed for, and capable of travel over, designated roads with four or more low pressure tires of 20 pounds per square inch (PSI) or less, a maximum width of less than 74 inches, a maximum weight less than 2,000 pounds, a wheelbase of 110 inches or less, and that meets at least one of the following: a minimum width of 50 inches; a minimum weight of 900 pounds; or a wheelbase of over 61 inches.

Wheeled all-terrain vehicles operated in the state must display a metal tag on the rear of the vehicle. The initial metal tag must be issued with an original ORV registration. The metal tag must be replaced every seven years at a cost of \$2 to be deposited into the Nonhighway and Off-Road Vehicle Activities Program Account (NOVA Account). The DOL must design the metal tag and it must be the same size as a motorcycle license plate and have "Restricted Vehicle" at the top. On the bottom left of the tag will be space for an off-road tab and on the

bottom right space for an on-road tab. The operator must have a current ORV registration tab and, in addition, may have an on-road vehicle tab and pay the annual vehicle license fee for the off-road or both off-road and on-road tabs. The substitute bill requires that the on-road tab must be a bright color and can be seen from a reasonable distance. The initial and renewal on-road registration fee is \$12 and is deposited into the Multiuse Roadway Safety Account (Multiuse Account). A wheeled all-terrain vehicle may not be registered for commercial use. Local authorities may not establish registration requirements for these vehicles.

A person that violates the following areas of operation will commit a traffic infraction.

Authorizes wheeled all-terrain vehicles to operate on a public roadway, not including non-highway roads and trails, under the following conditions:

- on public roadways of a county with a population of 15,000 or more if the county by ordinance has approved the operation of wheeled all-terrain vehicles on the county roadways;
- on public roadways of a county with less than 15,000 in population unless the county has designated roadways or highways within its boundaries to be unsuitable for use by wheeled all-terrain vehicles; or
- on public roadways of a city or town providing that the city or town by ordinance has approved the operation of wheeled all-terrain vehicles on city or town roadways.

This section does not affect any roadway designated as open or closed as of January 1, 2013.

A person may not operate a wheeled all-terrain vehicle:

- on state highways, except on a segment that is within the limits of a city or town and the speed limit is 35 miles per hour or less;
- crossing a public roadway in excess of 35 miles per hour unless the crossing begins and ends on a public roadway with a speed limit of 35 miles per hour or less and the intersection is 90 degrees;
- crossing at an uncontrolled intersection of a state highway; and
- on a public roadway in a city, town, or county with a population of 15,000 or more unless the city, town, or county by ordinance, has approved the vehicles on city roadways.

A city, town, or county must post those roads not suitable for wheeled all-terrain vehicle use publically on the main page of the city's, town's, or county's website.

The engrossed substitute bill states that the opt-in or opt-out for cities, towns, or counties does not affect any roadway that was designated as open or closed as of January 1, 2013.

A wheeled all-terrain vehicle is an ORV for purposes of recreation immunity.

The operator of a wheeled all-terrain vehicle upon a public roadway of the state must have a valid Washington driver's license or a license issued by the state of the person's residence. The operator must follow the rights and duties of a motorcycle, except that the vehicles may not be operated side-by-side in a single lane.

Exempts a wheeled all-terrain vehicle from the requirement to obtain motor vehicle liability insurance.

A wheeled all-terrain vehicle must have the following equipment: (1) headlights; (2) one tail lamp, except that utility-type vehicles must have two tail lamps; (3) a stop lamp; (4) reflectors; (5) turn signals if operating during hours of darkness; (6) mirror attached to either the right or left handlebar, except that a utility-type vehicle must have two mirrors; (7) a windshield (unless the operator is wearing eye protection); (8) a horn or warning device; (9) brakes in working order; (10) a spark arrestor and muffler; and (11) seatbelts for utility-type vehicles.

A person operating a wheeled all-terrain vehicle, not including emergency services or vehicles used in the production of agriculture and timber on a public roadway, must provide a declaration that includes:

- documentation of a safety inspection to be completed by a licensed wheeled all-terrain vehicle dealer or repair shop in Washington and certified under oath that the equipment as required meets state and federal law (a person making a false statement regarding the inspection is guilty of false swearing, a gross misdemeanor);
- documentation that the dealer or repair shop did not charge more than \$50 per inspection;
- a statement that the dealer or repair shop is entitled to the full amount charged;
- a vehicle identification number verification; and
- a release signed by the owner of the wheeled all-terrain vehicle that releases the state from any liability.

The DOL must track wheeled all-terrain vehicles in a separate registration category for reporting purposes.

The DOL may develop and implement along with rules an online training course for people that register wheeled all-terrain and utility type vehicles for use on a public roadway. Any future costs associated with the training course must be appropriated from the Highway Safety Account and any fees collected must be deposited to the Highway Safety Account.

The engrossed substitute bill creates the Multiuse Account. Receipts from the new on-road use registration fee of \$12 must be deposited into the Multiuse Account and only be spent after appropriation. The Washington State Department of Transportation will administer a grant program for:

- counties to perform engineering analysis of mixed-vehicle use on county roads;
- local governments to erect signs providing notice that wheeled all-terrain vehicles are present or crossing roadways;
- law enforcement for defraying costs due to wheeled all-terrain vehicles; or
- law enforcement to investigate accidents involving wheeled all-terrain vehicles.

Grants must be prioritized first by marking highway crossings warning motorists that wheeled all-terrain vehicles may be crossing when a recreation parking lot is on the other side of a roadway from the actual recreation facility. Signs must conform to the Manual on Uniform Traffic Control Devices. The Account will retain investment earnings.

Provides that the following vehicles are exempt from ORV registration and decal requirements: (1) any ORVs operated on and across agricultural and timber lands; (2) any ORVs used for emergency management; and (3) any ORVs operated by persons rendering emergency assistance.

Provides that an ORV may operate on any trail, non-highway road, or highway while under the direction of emergency management, search and rescue, or law enforcement, within the scope of their official duties.

No person under 16 years of age may operate an ORV on or across a highway or non-highway road in this state without direct supervision of a person 18 years or older possessing a valid driver's license. This restriction does not apply to emergency management or while rendering emergency assistance. Persons under 16 years of age may operate an ORV across a highway, if the crossing signs indicate that wheeled all-terrain vehicles or ORVs may be crossing. This section does not apply to vehicles used in the production of agricultural or timber products on and across lands owned, leased, or managed by the owner or operator of a wheeled all-terrain vehicle or the operator's employer.

Exempts ORV operators from the helmet requirement when used in the production of agricultural and timber products on and across lands owned, leased, or managed by the owner or operator's employer.

A person who operates a wheeled all-terrain vehicle upon public lands must follow local land-management requirements. If the person is found in violation, it is a traffic infraction by any law enforcement officer. If the infraction was not committed in the officer's presence, as long as there is reasonable evidence after an investigation of the violation and probable cause, then the officer must prepare a ticket of infraction and serve it upon the operator of the wheeled all-terrain vehicle. At a minimum, the evidence must include the time, location, and metal tag number or vehicle description.

The engrossed substitute bill designates that a county by ordinance may designate a road or highway within its boundaries to be suitable for use by ORVs. Designates that a county by ordinance may designate a road or highway within its boundaries to be suitable for use by ORVs. Designates that a city or town with a population of less than three thousand by ordinance may designate a road or highway within its boundaries to be suitable for use by ORVs. This provision does not apply to wheeled all-terrain vehicles.

The engrossed substitute bill adds to existing authorizations that it is lawful to operate an ORV on any trail, non-highway road, or highway while being used under the authority or direction of an agency that engages in emergency management, search and rescue, or law enforcement official duties.

The engrossed substitute bill changes the existing exemption for a person not having to wear a motorcycle helmet when operating on agricultural lands to "production of agricultural and timber products on and across lands owned or leased, or managed by the owner or operator of the ORV or the operator's employer."

Expands the use of existing ORV funds to publicly owned lands that came into private ownership in a federally approved land exchange completed between January 1, 1998, and January 1, 2005.

The engrossed substitute bill adds definitions for:

- "primitive road" to the definition of a non-highway road;
- direct supervision; and
- emergency management.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 28, 2013, except for section 3, which takes effect July 1, 2015, and section 25, which takes effect if the requirements set out in section 7, Chapter 36, Laws of 2012 are met.

Staff Summary of Public Testimony:

(In support) The bill brings balance between protecting the environment, providing increased opportunities for all-terrain vehicle usage, and promoting responsible ORV riding. A group of very dedicated people, from several interest groups, have devoted many hours to work together on this bill. There is a lot of confusion of where you can and cannot ride an ORV. This will enable our disabled veterans, disabled citizens, and older people to enjoy Washington. The metal tag concept is designed after Idaho's metal tag. The bill exempts timber and agriculture producers from the required equipment and operator requirements. The bill closes the gap by increasing the age from age 13 to 16 to operate an ORV without supervision, to line up with the age of 16 for a driver's license in the state. The bill clarifies the \$18 ORV fee still is deposited into the NOVA Account.

The on-road tab must be a bright color so that it can be seen from a reasonable distance. Cities, towns, and counties have options for opting in or out or designating roads as unsuitable for use by wheeled all-terrain vehicles.

This bill increases the ability for Washington to attract tourism dollars into the state. Since Reeder has been closed, there has been a drop of 55 percent in business in the surrounding area. There are very few ways to raise revenue for the state; this would raise revenues. By not having regulations that promote this type of activity, the existing regulations are sending dollars out of the state. People are not using their all-terrain vehicles in Washington, but are using them in other states like Idaho and Oregon. In the future, there will be the opportunity for electric all-terrain vehicles. These vehicles would only be allowed on roadways with a speed limit of under 35 miles per hour. This would be of great economic value to the City of Sultan.

The state all-terrain vehicle organization is in support of the bill and many people have been working on this issue for a long time. All parts of the bill have been discussed. Washington is losing tourist dollars and, if you talk with Idaho law enforcement, there have been very few

all-terrain vehicle issues in Idaho. The Washington State Patrol (WSP) would like additional equipment requirements for wheeled all-terrain vehicles.

Some day, it would be nice to have some of the non-highway roads opened up, many have been closed to ORVs for 40 years. The bill is very strict on the required equipment and requires a shop to inspect and certify that the equipment is within state and federal laws. The ORV users want to be safe.

It is appreciated that the bill does not include farms and there are no impacts to farmers.

In November all of the stakeholders were brought together to work on the bill. The bill increases all-terrain vehicle use, but also protects the environment. This bill creates something that benefits all stakeholders. The bill protects the backwoods, offering greater protection for those areas. If there is a problem, it provides time to investigate the problem. The metal tag provides a way to identify all-terrain vehicle operators that create damage and do not follow the rules. There has been lots of damage and abuse, but this will help people to use the land responsibly.

Dirt bikes with the required equipment and that are appropriately registered are already authorized to ride on roadways due to Senate Bill 5800.

(Neutral) The state has 2.1 million acres. This is one of the benefits of living in this state. Unless an ORV has an ORV permit, the ORV owner would need to have a Discover Pass to use the non-highway roads and trails in the state parks. If the ORV is for Search and Rescue, then no pass or ORV permit is required.

(With concerns) Counties have a concern with the opt-in and opt-out provisions.

(Opposed) The WSP appreciates the efforts of everybody, but it is very concerned, especially in regards to public safety. These vehicles are designed for off-road use only and do not have the equipment to be used for on-road use. Entrances coming onto a roadway may not be a formal entrance which puts the all-terrain vehicle operator and motorists at risk. There need to be signs at crossings. Many of the persons operating an ORV are unlicensed and untrained individuals. There are issues with the safety equipment and the fact that wheeled all-terrain vehicles will need two tail and brake lights due to being a wider vehicle. The agriculture and timber provisions are unclear.

It is necessary to have the operators trained on a wheeled all-terrain vehicle and have an endorsement. The operators need to know how the vehicle is going to react under certain conditions. There needs to be discussion on the definitions in the bill. This concept could expand to other vehicles like electric vehicles and other gas-related non-highway vehicles.

The Transportation Safety Commission has safety concerns with wheeled all-terrain vehicles being used on the roadways. One area the state has not seen a decrease is in motorcycle deaths. There is a chart and table that shows most accidents on motorcycles occur at low speeds. For ORVs there are four to five deaths per year.

The DOL recommends having a wheeled all-terrain endorsement on the driver's license. These vehicles are designated for on-road use and further conversation would be appreciated regarding House Bill 1632.

Persons Testifying: (In support) Representative Shea, prime sponsor; Linda Driscoll, Premier Polaris; Kenneth Walker, City of Sultan; Ken Irish; Ted Jackson; Gary Johnson, Gifford Pinchot Off Highway Vehicle Alliance; Patti Case, Green Diamond Resource Company; Tom Davis, Washington Farm Bureau; Gregg Bafundo, Trout Unlimited; Tisha Kennell, Back Country Hunters and Anglers; Mitch Freedman, Conservation Northwest; and Gary Prewitt, Eastern Washington All Terrain Vehicle Association.

(Neutral) Mark Mauran, Department of Natural Resources; and Susan Kavanaugh, Washington State Parks.

(With concerns) Gary Rowe, Washington State Association of Counties.

(Opposed) Steve Lind, Washington Traffic Safety Commission; Tony Simonti, Department of Licensing; and Rob Huss, Washington State Patrol.

Persons Signed In To Testify But Not Testifying: None.